

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA MIDDLE DIVISION**

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|---|---|--------------------------|
| U.S. BANCORP EQUIPMENT FINANCE, |) | |
| INC., a corporation, |) | |
| |) | |
| Plaintiff, |) | Case No. CV06-197 |
| |) | |
| vs. |) | |
| |) | |
| AFKO, INC., and FRANK E. JOHNSTON, |) | |
| |) | |
| Defendants. |) | |

**VERIFIED MOTION FOR ENTRY OF DEFAULT
AND FOR DEFAULT JUDGMENT**

Pursuant to Rule 55, Fed. R. Civ. P., plaintiff, US. Bancorp Equipment Finance, Inc. ("US Bancorp"), moves this Court to enter default and a default judgment against defendants, AFKO, Inc. ("AFKO") in the amount of \$92,429.33 and Frank E. Johnston ("Johnston") in the amount of \$92,429.33. In support of its motion, US Bancorp respectfully states as follows:

1. On March 1, 2006, US Bancorp filed this action against defendants AFKO, Inc. and Frank E. Johnston. The facts and allegations of the Complaint are supported by the affidavit of US Bancorp attached hereto as Exhibit A.

2. On March 7, 2006, AFKO and Johnston were both personally served with the Summons and Complaint.

3. More than twenty (20) days have elapsed since service of the Summons and Complaint upon the defendants AFKO and Johnston, and defendants have failed to plead or otherwise defend, as verified herein.

4. Upon information and belief, the defendant AFKO, Inc. is a corporation,


and is not a minor, incompetent, or in the service of the U.S. Military since the filing of this suit or for a period of six (6) months prior to such filing.

5. Upon information and belief, the defendant Frank E. Johnston, is not a minor, incompetent, or in the service of the U.S. Military since the filing of this suit or for a period of six (6) months prior to such filing.

6. The Affidavit of David A. O'Hara, which is attached hereto as Exhibit 1 and incorporated by reference herein, establishes that defendant AFKO, is indebted to US Bancorp in the amount of \$92,429.33 and that defendant Johnston is indebted to US Bancorp in the amount of \$92,429.33, exclusive of attorneys' fees and other costs of collection, all of which are provided for in the agreement between the parties.

7. Further, the Affidavit of C. Ellis Brazeal III which is attached hereto as Exhibit 2 and incorporated by reference herein, establishes that US Bancorp has incurred \$4,978.98 in attorneys' fees and expenses in this case. Plaintiff believes this to be a reasonable attorneys' fee for this action. The legal services rendered in connection with the collection of the indebtedness owed to US Bancorp in this case was necessary and authorized.

WHEREFORE, premises considered, US Bancorp prays that this Court will grant its motion; will order the clerk to enter default against defendants AFKO and Johnston; will enter a judgment by default in favor of US Bancorp and against defendants AFKO and Johnson, jointly and severally, in the amount of \$97,408.31. US Bancorp prays for such other and different relief that this Court deems appropriate.

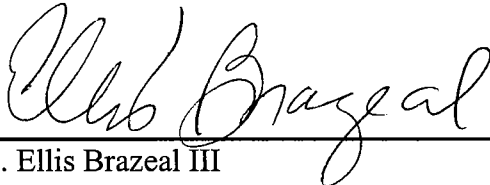

C. Ellis Brazeal III
Attorneys for U.S. Bancorp Equipment Finance,
Inc.

OF COUNSEL:

WALSTON, WELLS, & BIRCHALL, LLP
1819 5th Avenue North, Suite 1100
Birmingham, Alabama 35203
Telephone: (205) 244-5200
Telecopier: (205) 244-5400

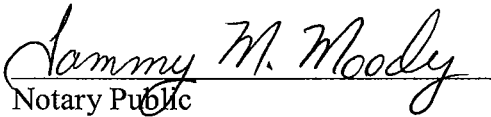
VERIFICATION

Before me, the undersigned authority, personally appeared C. Ellis Brazeal, III who, being by me first duly sworn, deposes and says on oath that he is a partner of Walston, Wells & Birchall, LLP, the attorney of record for U.S. Bancorp Equipment Finance, Inc., plaintiff in the above-styled cause; that he is authorized to execute this affidavit on behalf of the plaintiff; that except as otherwise stated, he has personal knowledge of the facts contained in the above and foregoing Verified Motion for Entry of Default and for Default Judgment, and said facts are true and correct unless otherwise stated.



C. Ellis Brazeal III

SWORN TO AND SUBSCRIBED before
me this 12th day of July, 2006.



Notary Public

My Commission Expires: 2/16/09

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Verified Motion for Entry of Default and for Default Judgment has been served, by placing same in the United States mail, properly addressed and postage prepaid, to the following:

AFKO, Inc.
615 Hambrick Road
Boaz, Alabama 35957

Frank E. Johnston
1828 Welcome Home Church Road
Horton, Alabama 35980-9578

Christopher F. Abel
Attorney at Law, LLC
215 South 4th Street
Gadsden, Alabama 35901

This the 12th day of July, 2006.

\s\ C. Ellis Brazeal III
Of Counsel